

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Melissa Hortman,

Complainant,

vs.

Republican Party of Minnesota,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

TO: Alan Weinblatt, Attorney at Law, Weinblatt & Gaylord, PLC, 111 East Kellogg Blvd, Suite 300, St. Paul, MN 55101; and Ben Golnik, Executive Director, Republican Party of Minnesota, 525 Park Street, Suite 250, St. Paul, MN 55103.

On September 22, 2006, Melissa Hortman filed a Complaint with the Office of Administrative Hearings alleging the Republican Party of Minnesota violated Minn. Stat. § 211B.06 by intentionally preparing and disseminating false campaign material. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint sets forth a prima facie violation of § 211B.06.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **9:30 a.m. on Thursday, September 28, 2006**. The hearing will be held by call-in telephone conference. **A staff attorney will notify you of the number to call and the code to enter in order to participate in the telephone conference.** The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Heydinger at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: September 25, 2006

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Melissa Hortman is a member of the Minnesota State House of Representatives representing District 47B. She is running for re-election in the November 7, 2006, General Election. The Complaint alleges that on or about September 18, 2006, the Respondent distributed campaign literature¹ that contained false statements designed to injure and defeat Ms. Hortman's candidacy. The campaign literature states that it is "Paid for by the Republican Party of Minnesota" and it urges voters to "Say no to Melissa Hortman."² The literature also states as follows:

Even though she promised to "*reduce homeowner property taxes*"³
Melissa Hortman failed to introduce even one bill to do so.⁴

¹ Complaint Ex. 1.

² Complaint Ex. 1.

³ Footnote 5 in Ex. 1 citing "Hortman 2004 campaign literature." (Emphasis in original).

⁴ Footnote 6 in Ex. 1 stating "As Chief Author. See www.house.mn/members/47B."

The Complaint alleges that the statement that Representative Hortman never authored or introduced a bill reducing homeowner property taxes is false. The Complaint points out that Representative Hortman was the chief author of House File 2310 (HF 2310), which increased referendum equalization aid and the referendum revenue cap. According to the Complaint, HF 2310 would have provided approximately \$18 million in property tax relief statewide, including \$3 million in property tax relief to the Anoka Hennepin district. The Complaint further alleges that Respondent knew the statement at issue was false since its campaign literature cited the government website that lists all of the bills of which Representative Hortman was the Chief Author, including HF 2310.

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

... [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

The Administrative Law Judge finds that the Complainant has made a prima facie showing that Respondent violated the prohibition against false campaign material found at Minn. Stat. § 211B.06. This matter will proceed to a probable cause hearing.

B.J.H.